

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

JOHN GILBERT,)
)
 Plaintiff,)
)
 v.)
)
 APC NATCHIQ, INC.,)
)
 Defendant.) Case No.: 3:03-CV-00174-RRB
)

[PROPOSED] ORDER GRANTING DEFENDANT'S
MOTION FOR RULE OF LAW ESTABLISHING FLSA DAY
RATE CALCULATION OF OVERTIME DAMAGES

THIS MATTER having come before the court on Defendant, APC Natchiq, Inc.'s, Motion for a Rule of Law Establishing the FLSA Day Rate Calculation of Overtime, and the court having considered the memoranda of counsel with authorities and exhibits submitted therein,

IT IS HEREBY ORDERED that Defendant's motion is GRANTED. The AWA is silent on the issue of the proper calculation of overtime for employees paid according to a day rate. Thus, it is proper for this court to look to the FLSA. See Whitesides v. U-Haul Co., 16 P.3d 729, 732 (Alaska 2001). The FLSA's interpretive regulations instruct that overtime for day rate compensated employees must be calculated according to 29 C.F.R. § 778.112. Applying this section to the case at hand, while

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being mindful of the AWA's more favorable allowance of overtime where an employee works in excess of eight (8) hours per day, results in the calculation urged by the Defendant.

If the Plaintiff is entitled to overtime, then overtime damages shall be calculated as follows:

- Step 1: Determine Weekly Compensation: Plaintiff's day rate multiplied by the number of days worked in the workweek.
- Step 2: Determine the Regular Rate of Pay: Divide weekly compensation by total hours worked in the workweek.
- Step 3: Determine Half-Time Rate: Multiply the regular rate of pay by .5.
- Step 4: Determine Overtime Hours: If an employee works less than 40 hours in a workweek, overtime hours are those hours worked in excess of eight (8) in a day. If an employee works more than 40 hours in a workweek, overtime hours are those worked in excess of 40 in the week.
- Step 5: Calculate Damages: Multiply the overtime hours by the half-time rate.

DATED: _____

THE HONORABLE RALPH R. BEISTLINE
UNITED STATES DISTRICT COURT JUDGE

This is to certify that a true copy of the foregoing was served via electronic service or U.S. Mail this 26th day of July, 2006, to the following:

Kenneth L. Covell
712 8th Avenue
Fairbanks, AK 99701

/s/ Juliana Wood

By: _____
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